IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 15118 of 2007(Y)

CMA.71/2006 of ADDL.DISTRICT COURT,KOTTAYAM
OS.416/2006 of M.C.,KOTTAYAM
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PETITIONER: APPELLANT/PETITIONER (PLAINTIFF)

RAMACHANDRAN KUNNAPPALLY,
KUNNAPPALLY HOUSE, 262/XIV,
KODIMATHA KARAM, KOTTAYAM VILLAGE, KOTTAYAM.

BY ADV. SRI.A.K.HARIDAS

RESPONDENTS/RESPONDENTS/RESPONDENTS : DEFENDANTS
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1. IQBAL, ANCHANATTU HOUSE,
KODIMATHA P.O., KODIMATHA KARA,
KOTTAYAM.

2. HAMEED, ANCHANATTU HOUSE,
KODIMATHA P.O., KODIMATHA KARA,
KOTTAYAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 15118 OF 2007

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Dated this the 28th day of May, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Addl. District Judge, Kottayam in CMA 71/06. The plaintiff, a practising advocate is residing in the plaint schedule property and it is his contention that on account of the unbearable noise created by the defendants by using hammer, the life has become miserable and therefore he wants to get the nuisance abated.

2. On the other hand, the defendants would contend that they started the unit in the year 1970 and they are using hammers less than 250 grams of weight to straighten the tin sheets. It is also contended that the area were the plaintiff resides is not a residential area and therefore requested the Court to dismiss the prayer for injunction.

3. The trial court as well as the Appellate Court on an analysis of the materials came to a conclusion that a blanket order of injunction cannot be granted at that stage and therefore dismissed the injunction application. It is challenging that order the present writ petition is filed.

4. The learned counsel would argue before me that in a case of this nature as per the decision reported in **Sujatha v. Prema 2005 (3) KLT 458,** the burden of proof is on the defendant to prove that he is not causing anything which will harm a good neighbourhood. I had gone through the orders of the Court below. The facts would reveal that the defendants predecessors had started doing work in the year 1970 and there are documents produced to show that they are running such a business at least from the year 1982 onwards. The plaintiff has purchased the property in the year 1994 and he still continues to live in that house. So it has to be held that much prior to the purchase of the property by the plaintiff, defendants had been using the disputed premises and it is also submitted that the defendants are using less than 250 grams of hammer for straightening the tin sheets. It is to be held that, in such type of cases, even at the time of institution of the suit the alleged nuisance was in existence. So, unless one is able to establish that it is very disastrous to the very living, the Court should not ordinarily interfere with the status quo till a final decision is taken on merits. However, much scientific evidence as well as other circumstantial materials are necessary for a proper trial and

determination of the case. Therefore, I feel that the Courts below had taken the right decision in not granting the order of injunction at the initial stage. Therefore, the writ petition lacks merit and it is dismissed.

But, I make it very clear that since it is a case relating to the factum of nuisance suffered by two professionals, a direction is to be given to the trial court to dispose of the matter as expeditiously as possible and not more than four months from today. It is also made clear that when the case is decided by the learned trial judge he should not be influenced by any of the observations made in the orders which are passed in the I.As.

M.N. KRISHNAN, JUDGE.

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